

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFRED LORENZO HARRIS,

Defendant and Appellant.

D046327

(Super. Ct. No. SCD185690)

APPEAL from a judgment of the Superior Court of San Diego County, William H. Kennedy, Roger W. Krauel and Browder A. Willis, Judges. Affirmed.

Alfred Harris pleaded guilty to felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) after the trial court denied his motions to suppress evidence (Pen. Code, § 1538.5). Harris appeals, contending his motions to suppress were erroneously denied because his initial detention was unlawful and his consent to the search of his person was vitiated by his unlawful detention. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On the afternoon of September 19, 2004, San Diego Police Officer Scott Bartolomei was patrolling Camino Ruiz when he saw a car believed to be associated with a parolee-at-large. One week earlier, a confidential informant provided Bartolomei with the description of a car in which the fugitive, Christopher Burroughs, had been seen. Bartolomei determined that the described car belonged to an Asian woman named Helen who lived on Camino Ruiz.

On September 19, Bartolomei observed Helen's car being driven on Camino Ruiz. He noticed the driver was an Asian female and the passenger was a black male who fit the general description of Burroughs. The wanted flyer on Burroughs included a photograph of a black male described as standing six feet tall and weighing 180 pounds. Bartolomei followed the car until it stopped at a shopping center. He parked behind the car, preventing it from further movement. As he approached the car, he noticed the passenger was not Burroughs but rather Alfred Harris, who was known to him. When the driver confirmed that her name was Helen, Bartolomei escorted her to his patrol car and asked her questions about Burroughs.

Shortly after Bartolomei reached the shopping center, Officers Robinson and Van Cleave arrived. Bartolomei told Robinson that Burroughs was not the man in the car. Robinson obtained consent from Helen to search her car. Robinson asked Harris to get out of the car and searched it for about five minutes. Robinson then obtained Harris's consent to search him. Robinson found a small plastic baggie of crystal

methamphetamine in Harris's right pocket. Harris admitted the methamphetamine belonged to him.

Harris moved twice to suppress evidence of the methamphetamine under Penal Code section 1538.5. After the court denied Harris's motions to suppress, Harris pleaded guilty to possessing methamphetamine. The court suspended imposition of sentence and placed Harris on formal probation for three years (Pen. Code, § 1210.1).

DISCUSSION

I

Standard of Review

In reviewing a trial court's ruling on a motion to suppress, " '[w]e defer to the trial court's factual findings, express or implied, [that are] supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]' " (*People v. Weaver* (2001) 26 Cal.4th 876, 924, quoting *People v. Glaser* (1995) 11 Cal.4th 354, 362.) The presumption on appeal favors the trial court's exercise of its " 'power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences.' " (*People v. Leyba* (1981) 29 Cal.3d 591, 596.)

II

Harris's Initial Detention

Harris claims his original detention was unlawful because it was not supported by a reasonable suspicion of legal wrongdoing. He argues his initial detention occurred when, as a passenger in Helen's car, the car was blocked from further movement by

Bartolomei's car. He claims his detention was unlawful because it was based on week-old information and Officer Bartolomei was unable to see any identifiable features of Harris while he followed the car.

The Fourth Amendment protection against unreasonable searches and seizures extends to brief investigatory stops or detentions. (*People v. Butler* (2003) 111 Cal.App.4th 150, 160, citing *Terry v. Ohio* (1968) 392 U.S. 1, 9.) A detention is reasonable when, based on the totality of the circumstances, "the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." (*Butler*, at p. 160.) The issuance of a warrant and a connection between the fugitive and the detained car is a reasonable basis for a detention. (*People v. Dominguez* (1987) 194 Cal.App.3d 1315, 1318.) There is a reasonable basis for a detention of a passenger who is reasonably believed to be involved in a past crime. (*People v. Williams* (1995) 33 Cal.App.4th 467, 476.)

A

Harris contends his initial detention was unreasonable because Officer Bartolomei relied on stale information from a confidential informant. In support of his argument, Harris cites two cases in which time was one of several factors used in determining the currency of the information. In *People v. Dominguez, supra*, 194 Cal.App.3d at p. 1317, the court held the information relied on by the police was reasonable because the information was "recently" provided to the police and it included specific information about the suspect's car along with a general description of the suspect. In contrast, the information relied on in *People v. Durazo* (2004) 124 Cal.App.4th 728, 735 was

unreasonable because several days had passed and the victim did not provide specific information about the suspects' appearances. *Dominguez* and *Durazo* turn on the existence of specific information about the suspect's car rather than the passage of time.

Here, the information relied on by Officer Bartolomei was detailed. The informant described the car in which she had seen Burroughs and described the owner of the car. In addition, the informant took Officer Bartolomei to the car. Officer Bartolomei later recorded the car's license plate number and confirmed it was registered to the woman believed to be the owner. Considering the specific information in conjunction with a passenger meeting the general description of Burroughs, we conclude the passage of one week did not make the informant's information impermissibly stale.

B

Harris further contends Officer Bartolomei acted unreasonably because he was unable to see Harris's face before detaining him in the car. He relies on two cases in which he asserts the stops were "predicated on . . . getting a good, if not perfect, look at the occupant." However, in each of the cited cases, the stop was not made based on an identification of the occupants but rather on specific information about the cars. In *People v. Williams, supra*, 33 Cal.App.4th 467, 473, the car was stopped without any confirmation that the occupants resembled the subject of the warrant. In *Dominguez, supra*, 194 Cal.App.3d at p. 1318-1319, the stop was based on identifying a specific car driven by a man meeting the general description of the suspect.

Here, Officer Bartolomei recognized the car as the one described by the informant and confirmed it was registered to a woman named Helen. While following the car, he

also saw that the driver was an Asian female and the passenger was a tall black male. Based on these observations, we conclude Officer Bartolomei acted reasonably in preventing further movement of Helen's car.

III

Harris's Continued Detention

Harris claims his original detention, even if legal, was unduly prolonged and became illegal when it did not cease after Officer Bartolomei recognized he was not Burroughs and Harris was asked to get out of the car.

There is no bright line rule for determining when a legal detention exceeds reasonable time limits and becomes illegal. A court must "consider the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes." (*U.S. v. Sharpe* (1985) 470 U.S. 675, 685.) The reasonableness of the duration " 'depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." ' " (*Maryland v. Wilson* (1997) 519 U.S. 408, 411, quoting *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 109.)

The length of the detention here was a disputed fact. Harris contends his detention lasted approximately 30 to 45 minutes. However, the court determined Harris's estimate of time was not credible. The court's determination is supported by the following evidence: Officers Robinson and Van Cleave arrived shortly after Officer Bartolomei; Officer Robinson immediately requested permission from Helen to search her car; the search of the car lasted approximately five minutes. After completing the search of the

car, Officer Robinson asked for consent to search Harris. There is substantial evidence to support the court's implied finding that the duration of the detention was considerably shorter than Harris estimated.

In *People v. Dominguez, supra*, 194 Cal.App.3d at p. 1318, the court held brief questioning of the occupants of a car may be warranted to determine the whereabouts of the person wanted. Here, Officer Bartolomei was on the lookout for Burroughs, a wanted fugitive. He stopped and approached Helen's car based on a reasonable suspicion the passenger was the fugitive in question. After he recognized that Harris was not Burroughs, Bartolomei proceeded to question Helen about Burroughs's whereabouts. During this questioning, Bartolomei received information about Burroughs. Because Helen was believed to recently be in the company of Burroughs, it was reasonable for Bartolomei to continue the detention long enough to seek information from Helen about Burroughs's recent movements.

IV

Harris's Voluntary Consent

Harris concedes he consented to a search of his person, but claims his consent was vitiated because it was given during his unlawful detention. Because we conclude Harris's detention was lawful, his consent was not vitiated by his detention.

The Fourth Amendment prohibits searches of persons or property without a warrant or warrant exception. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) The voluntary consent of the individual searched is a warrant exception. (*Ibid.*) "The determination of voluntariness in the first instance requires careful examination of all

facts surrounding the consent [Citation] and the trial court's resolution of this question is given great deference." (*People v. Henderson* (1990) 220 Cal.App.3d 1632, 1651.)

However, consent is involuntary when it is obtained during an unlawful detention. (*Ibid.*)

The trial court found the search of Harris to be the result of his voluntary consent. The testimony of both Officer Robinson and Harris supports this finding. Because Harris's detention was lawful and his consent was voluntary, we conclude the search was not illegal and the motions to suppress were properly denied.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.